

JOHNSON COUNTY WEED AND PEST  
CONTROL BOARD

IBLA 99-316

Decided May 18, 2001

Appeal from a Decision Record and Finding of No Significant Impact issued by the Buffalo Field Manager, Bureau of Land Management, Wyoming, selecting the no action alternative, thereby rejecting Johnson County's proposed action to control a prairie dog population on public land. EA No. WY 070-99-177.

Affirmed.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

A BLM decision selecting the no action alternative, rather than a county's proposed action to control a prairie dog population on public lands, which is based on an EA, will be affirmed on appeal when the record establishes that a careful review of environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination to select the no action alternative is reasonable in light of the analysis.

APPEARANCES: Rod Litzel, District Supervisor, for Johnson County Weed and Pest Control Board, Buffalo, Wyoming; Lowell L. Madsen, Esq., Assistant Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Johnson County Weed and Pest Control Board (JCWP) has appealed a Decision Record and Finding of No Significant Impact (DR/FONSI) issued on April 16, 1999, by the Buffalo Field Manager, Bureau of Land Management (BLM). BLM undertook the preparation of an environmental assessment (EA) pursuant to JCWP's request that BLM participate in a prairie dog control program on approximately 200 acres of public lands, identified as the Hibbard stockrest, within a 100,480-acre area designated by JCWP as the "Mesa" special management program area in Johnson County, Wyoming.

In the EA, BLM evaluated three alternatives. Alternative 1 was the action proposed by JCWP to control prairie dogs on the public lands through application of a rodenticide. Alternative 2 was no prairie dog control.

Under that alternative, prairie dogs would not be controlled by rodenticides or by shooting. The stockrest would be closed to recreational shooting. Under the third alternative, the no action alternative, no prairie dog control would be authorized by the Animal and Plant Health Inspection Service on BLM-administered lands per the decision record for the 1994 Animal Damage Control plan for the Casper District. Occasional recreational shooting would continue to occur.

In the DR/FONSI, the Buffalo Field Manager selected alternative 3 of the EA, the no action alternative or status quo "which allows the prairie dog population and associated wildlife on the Hibbard stockrest to continue." (DR/FONSI at 1.)

According to the EA, prairie dogs occupy approximately 7,000 acres within the special management program area. Prairie dogs are controlled on private and State of Wyoming lands within the control area through the use of a rodenticide. BLM does not presently control prairie dogs on BLM-administered public lands in Johnson County. <sup>1/</sup> JCWP sought BLM's assistance in controlling prairie dogs because it believed that not controlling the prairie dogs on public lands would result in "reinvansion of private and state lands." (EA at 1.)

In his DR/FONSI at 1, the Buffalo Field Manager concluded:

It was demonstrated in the EA that prairie dog populations throughout the west and Wyoming have significantly declined from historic levels. The black-tailed prairie dog that occurs on the Hibbard stockrest was recently proposed for listing under the Endangered Species Act. Whether such designation is justified is not a BLM decision. However, it is important that BLM participate to prevent the listing of the species, which this decision does.

On appeal, JCWP's first challenge is that BLM failed to properly evaluate the natural resource issue. It alleges that BLM erred in concluding that the no action alternative would have no significant impact, especially on the quality of water. JCWP asserts that BLM failed to properly address "water quality, erosion potential, decreased forage production and an increased invasion of exotic and poisonous weeds." (Statement of Reasons (SOR) at 1.) It claims that livestock usage in the stockrest has declined because of a lack of control of prairie dogs. It asserts that a water shortage has occurred "no doubt" because of silting actions caused in turn by erosion of bared areas damaged by prairie dogs and that forage has decreased because of prairie dog activity and weed

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<sup>1/</sup> The EA states at page 5 that prairie dogs were controlled on the stockrest through the use of a rodenticide "in the early 1980's under a similar JCWP effort," and "[t]he population fully recovered from this control effort in 5 years."

competition. Id. This, JCWP argues, is evidence of significant environmental impacts resulting from the "no action" alternative.

BLM responds that the Hibbard stockrest was evaluated by BLM range specialists in 1998 as part of a rangeland standards and guidelines evaluations program during which soil erosion, water quality, and vegetation were considered. BLM claims that no significant soil erosion was found and weed levels were acceptable. (Answer at 4). BLM admits that livestock usage has declined in the Hibbard stockrest area, but states that it has nothing to do with an overabundance of prairie dogs; rather, the decline is "due to the lower number of livestock herds that are trailed to mountain pastures now as compared to past years." (Answer at 5.)

JCWP further asserts that control of the prairie dogs would neither eliminate habitat nor the population of prairie dogs. It notes that previous control actions have left about 10 percent of the prairie dog population, sufficient as a prey base for other animals. In addition, it argues that the population of the prairie dogs, as noted in BLM's records, was fully recovered five years after the control action.

BLM responds that killing all, or nearly all of the prairie dogs on the Hibbard stockrest "will drastically modify the ecosystems found thereon" and those ecosystems provide habitat for other wildlife, some of which are dependent upon prairie dogs as a food source. (Answer at 5).

JCWP next refers to the possibility, considered in the EA, that threatened or endangered species such as the black-footed ferret, bald eagle and peregrine falcon might be poisoned along with the prairie dogs, if a poison control action were undertaken. That possibility, it states, is unreasonable because there are no documented cases of "secondary poisoning." (SOR at 2.) Moreover, sensitive species such as the swift fox, burrowing owl, and mountain plover have not been found within the Hibbard stockrest area, JCWP claims.

While admitting that "the possibility of secondary poisoning \* \* \* is rare," BLM maintains that it is possible when the poisoned species is the primary prey of the sensitive species. The more direct impact on threatened and endangered species, according to BLM, is the cumulative loss of the prey basis for such species. (Answer at 5-6.)

JCWP takes issue with the statement in the EA at 7 that "[i]n the last 20 years, prairie dog habitat in the Buffalo planning area has been reduced from an estimated 10,000 acres to 1000 acres as a result of sylvatic plague occurrences, habitat conversion and control efforts." 2/

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2/ According to the EA, in 1981 there were an estimated 8,000 acres of BLM-administered lands inhabited by prairie dogs in Johnson County, Wyoming. Two other Wyoming counties, Sheridan and Campbell, contained an additional 2,000 BLM-administered acres of prairie dog habitat. At the time of completion of the EA, BLM estimated the population of prairie dogs

JCWP asserts that habitat loss could only be due to conversion,"which more than likely would come from urban growth or continual cropping systems (where is this documented in the area?) otherwise the habitat would still be there." (SOR at 2.) JCWP maintains that the prairie dogs are a hardy lot who keep coming back to reoccupy and expand their habitat. BLM does not directly defend the statement in the EA. Instead, it states that "land subjected to a systematic and continuous program designed to poison as many prairie dogs as possible does not constitute a habitat for such animals." (Answer at 6.) However, there is no evidence in the record that such a program takes place on public lands.

Finally, JCWP argues that it operates under the authority of the Wyoming Weed and Pest Control Act of 1973, and that, under that Act, the prairie dog is defined as a pest subject to "forced control." (SOR at 2.) Essentially, JCWP asserts that BLM's management authority is limited to the public lands themselves and that JCWP's authority to control pests extends to public lands, when those pests are located on public lands. In response, BLM refers to an October 7, 1997, memorandum from an attorney, Terri L. Anderson, in the Office of the Regional Solicitor, Rocky Mountain Region, Lakewood, Colorado, to the BLM Wyoming State Director, entitled "Authority for Control of Prairie Dogs on Federal Land." BLM states that the October 7, 1997, memorandum discusses the respective rights and responsibilities of the Federal and state government regarding the control of wildlife on public lands, including wildlife such as prairie dogs which have been designated by a state as a pest. Therein, Anderson summarized:

In sum, State governments, absent prior Federal involvement, remain free to regulate wildlife found within State borders and have indeed retained their roles as the primary managers of the wildlife resource. But the Federal Government, upon determining the existence of a significant Federal or national interest in a particular species or population and regardless of prior State action, may, through the exercise of congressional power, assert its right of control.

(Memorandum at 11.)

Anderson concluded that a Wyoming county's plan to implement prairie dog control actions on public lands was "inconsistent with the long-range plan of the BLM for effective resource management." (Memorandum at 12.) Such action by the county would, in Anderson's opinion, be tantamount to substituting its judgment for that of Congress concerning the appropriate use and management of the public lands. Anderson pointed out that under the Federal Land Policy and Management Act of 1976 (FLPMA), the Secretary is directed to not only manage the public lands and resources to protect the quality of the ecological values, but to manage them in a manner that will provide food and habitat for fish and wildlife and domestic animals, citing 43 U.S.C. § 1701(a)(12) (1994).

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fn. 2 (continued)

on BLM-administered lands in Johnson, Sheridan, and Campbell counties to cover approximately 1,000 acres. (EA at 7.)

Consistent with Anderson's opinion, BLM argues in this case that it has a duty under FLPMA to manage the public lands under principles of multiple use and sustained yield and to promote the existence of well-balanced ecosystems on the public lands. <sup>3/</sup> To implement its responsibilities, BLM must "review and monitor all county-sponsored predator and pest control programs proposed for public lands and reject any proposed activities that are inconsistent with statutory mandates." (Answer at 7.)

[1] In this case, BLM determined that selection of the no action alternative would not have a significant impact on the human environment. JCWP disagrees, not because it believes that BLM should have concluded that an environmental impact statement was necessary, but because it believes that the prairie dog population on public lands in Johnson County needs to be controlled and that control should include the use of rodenticides.

BLM cited major wildlife concerns in the EA for choosing the no action alternative. It stated that threatened or endangered species, such as the black-footed ferret, bald eagle, and peregrine falcon, which prey on the prairie dogs, could be adversely impacted by secondary poisoning. While BLM admitted on appeal that secondary poisoning is rare, it emphasized another ground cited in the EA, loss of prey. BLM stated in the EA that bald eagles and peregrine falcons are opportunistic and would shift their predation to other birds or mammals; however, "[t]he primary prey of black-footed ferrets is prairie dogs, and the occurrence of this rare mammal would be directly affected by the reduced number of prairie dogs." (EA at 6.) BLM also noted that "sensitive" species such as swift fox, burrowing owls, and mountain plovers could occur in the area and are associated directly with prairie dog populations. Id. BLM also cited the possibility of secondary poisoning to other predator species such as coyotes, red fox, bobcat, badger and raptor birds as a basis for choosing the no action alternative.

The EA states that the majority of prairie dog colonies exists on private and state lands where BLM has no control. Also, the FWS published a finding (64 FR 14424 (Mar. 25, 1999)), that the listing of the black-tailed prairie dog as a threatened species might be warranted and

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<sup>3/</sup> Multiple use is defined as

"the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; \* \* \* the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; \* \* \* with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

43 U.S.C. § 1702(c) (1994).

that it was initiating a status review. According to the EA, animals not officially listed, but undergoing status review are considered "sensitive" species. (EA at 7.) The EA states that it is BLM's policy under the Endangered Species Act to insure that actions authorized on BLM-administered lands do not contribute to the need to list any special status species, which, it states, includes sensitive species. (EA at 7.)

In a March 18, 1999, letter to the BLM Buffalo Field Office, responding to BLM's scoping statement regarding JCWP's proposal, the Wyoming Game and Fish Department (WGFD) referred to a "pending petition to list the black-tailed prairie dog as Threatened species." While WGFD made no recommendations, it did opine that the best action to prevent listing of the prairie dog would be a "cooperative effort by all parties to determine the current status of the species and to formulate conservation strategies," and that control action "on federal land may not be advisable if conservation strategies are to be developed to ensure stable long-term management of this species."

In this case, the record shows that BLM made a careful review of the environmental problems posed by JCWP's proposed action. It identified relevant areas of environmental concern, and we conclude that the final determination to select the no action alternative is reasonable in light of the environmental analysis. JCWP has raised objections to BLM's selection of the no action alternative, but those objections essentially amount to differences of opinion, which are insufficient to establish that BLM erred in its selection. See Howard G. Booth, 134 IBLA 300, 305 (1996), and cases cited therein. Moreover, JCWP's understanding regarding BLM's responsibilities under FLPMA, as shown above, is legally incorrect.

Moreover, JCWP's crucial interest, the possibility that prairie dogs will reinvade private or state lands, does not go unrecognized in BLM's evaluation. BLM states in its consideration of the no action alternative that "[o]ccasional recreational shooting would continue to occur" and "would prevent the population from expanding to adjacent lands." (EA at 3, 5.)

We conclude that BLM properly selected the no action alternative, thereby rejecting JCWP's proposed action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge

